

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner appealed this decision claiming that his ex-wife owes him more than this amount because she stole certain artwork from him. The petitioner maintains that this theft occurred in 1993.

3. The child support arrearage amount is based on a Vermont Superior Court Order dated March 22, 1990. The petitioner concedes that this order has not been amended and that he has never sought modification of it. The petitioner does not dispute that based solely on the order and his history of payment the arrearage amount of \$8,749.42 is correct.

4. In an Administrative Review Decision dated December 5, 2001 OCS found that it lacks the authority to unilaterally credit his child support arrearage absent either a court order modifying it or a notarized statement from his ex-wife consenting to it.

5. In a telephone hearing held on March 7, 2002, the petitioner admitted the above facts and represented that he has retained an attorney in Vermont to seek a modification of the underlying court order of support.

ORDER

The decision by Office of Child Support is affirmed.

REASONS

Under both federal and state law, OCS has been given the authority to collect child support debts owed to it or persons it represents through a variety of mechanisms, including the interception and offset of state and federal tax returns. See 42 U.S.C. § 664, 45 C.F.R. § 303.72, and 33 V.S.A. § 5933. The Board has noted that this offset is an administrative, rather than judicial, remedy for collection and is "in addition to and not in substitution for any other remedy available by law." Fair Hearing 12,608 (citing 33 V.S.A. § 5933[a] and Guthmiller v. North Dakota Department of Human Services, 421 N.W.2d 469 [N.D. 1988]).

In all child support collection cases the amount of any arrearage is determined by the terms of any existing court order and the responsible parent's subsequent compliance with that order. Under Vermont law only the Family Court is empowered to establish and modify existing child support orders and arrearages. See 15 V.S.A §§ 591 and 606.

In this case there is no dispute that based solely on the existing (1990) order of support and the petitioner's payment history OCS correctly determined his arrearage to be \$8,749.42. By law neither OCS nor the Human Services Board has the authority to alter that amount. The petitioner is

free to seek a modification of this amount in Vermont Family Court, and appears ready to do so. However, until he does, it must be concluded that OCS has the authority to collect the outstanding debt through the administrative remedy of a tax refund offset.

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